



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

[Docket DARS-2015-0048]

RIN 0750-AI73

Defense Federal Acquisition Regulation Supplement: Eliminate Data Collection Requirement (DFARS Case 2015-D031)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to eliminate a requirement for military departments and defense agencies to collect and report relevant data on award and incentive fees paid to contractors.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Tresa Sullivan, telephone 571-372-6089.

SUPPLEMENTARY INFORMATION:

I. Background

Section 814 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) requires that DoD provide

guidance on the appropriate use of award and incentive fees in DoD acquisition programs, including the requirement to ensure that DoD collects relevant data on award and incentive fees paid to contractors and has mechanisms in place to evaluate such data on a regular basis. DFARS 216.401-70, Data collection, states this latter requirement of section 814. Previously, DoD collected award and incentive fee data semiannually by a manual data call from the DoD components, which was very labor-intensive. On April 6, 2015 (80 FR 18323), DoD removed from DFARS 216.401-70 the requirement to follow the reporting requirements in the associated DFARS Procedures, Guidance, and Information, because DoD can now obtain relevant data through peer reviews and other sources, such as the Contract Business Analysis Repository (CBAR). This final rule removes the remaining statement about the statutory requirements of section 814. Retention of this statement in the DFARS is no longer necessary, because there is no longer a need to collect data directly from the contracting officer or other members of the contracting community in the military departments or defense agencies.

II. Publication of this final rule for public comment is not required by statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled

"Publication of Proposed Regulations." Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it deletes an unnecessary statement from the DFARS. This revision has no significant effect beyond the internal operating procedures of the Government and has no cost or administrative impact on contractors or offerors.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section

6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 216

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 216 is amended as follows:

PART 216—TYPES OF CONTRACTS

1. The authority citation for 48 CFR part 216 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

216.401-70 [Removed]

2. Remove section 216.401-70.

